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Summary of Argument.

I.

The "reasons" advanced by petitioner for allowance of the writ are wholly without merit. Petitioner's reasons are without substance and disappear entirely when the facts and applicable law are examined. The decision of the Third Circuit, relied on by petitioner, is a decision involving eminent domain proceedings, not the same matter as here 4-7

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It was not until September 30, 1947 that Chicago Transit Authority took title to the personal property which was assessed to debtors as owners on April 1, 1947. This latter date is fixed by Illinois statute as being determinative of liability and ownership for tax

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Statutes exempting property from taxation are strictly construed and the mere fact that the property concerned is municipally owned does not dilute the strength of the settled rule, nor impede its application. Since the personal property in question did not "belong" to the Authority on Assessment day it was not exempt from taxation 11-16

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1949.

No. 510, 511

In the Matter of
CHICAGO RAILWAYS COMPANY, et al.,
Debtors.

CHICAGO TRANSIT AUTHORITY,
Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS and JOHN E. SULLIVAN, Liquidating Trustee, Etc.,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT THERE HEARD ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION.

BRIEF OF THE PEOPLE OF THE STATE OF ILLINOIS, RESPONDENT, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

MAY IT PLEASE THE COURT:

STATEMENT OF THE CASE.

No tax claim is made or asserted against the Chicago Transit Authority, petitioner here, by the People of the

State of Illinois. The Authority * commenced this course of litigation by intervening (R. 71) in the District Court's reorganization proceedings of the Chicago Surface Lines, Debtors, where the People's tax claim was pending against the Debtors.†

In Illinois the statutory assessment and owner liability Date is April 1. The Chicago Transit Authority did not acquire title to the personal property, upon the assessment of which our tax claim is founded, until September 30, 1947 (R. 104). Due to various voluntary commitments made by the Chicago Transit Authority as purchaser under the Plan of Reorganization, taxes are to be pro-rated between the Trustee and the Chicago Transit Authority (Petition, page 4). Petitioner now enjoys a statutory privilege of exemption from taxes for property belonging to it, and sought to interpose that exemption in order to defeat, in whole or part, our claim against the Debtor-Surface Lines (R. 75-81) and thereby eliminate entirely or reduce the Authority's contractual obligation to the Trustee, under the Plan of Reorganization.

The Question Presented.

Since the General Assembly of Illinois long ago provided that the owner of property on the first day of April in any year shall be liable for the taxes for that year, and the Debtors, here, were owners of the personal property assessed on April 1, 1947, can the People's tax claim made solely against those Debtors, (not against the Chicago

* Hereinafter variously referred to as "Chicago Transit Authority," "the "Authority" and "C.T.A.," all of which denotes the Petitioner before this Court.

† Debtors in proceedings for organization are: Chicago Railways Company, Chicago City Railway Company, Calumet and South Chicago Railway Company, The Southern Street Railway Co., Chicago Western Railway Co., collectively sometimes referred to as the Surface Lines.

Transit Authority) be abated or defeated by acquisition of title, on September 30, 1947, by the Chicago Transit Authority, a tax exempt purchaser of said property under the Plan of Reorganization and pursuant to which Plan the Authority is self-committed to the Trustee to pro-rate taxes?

Opinions of the Courts Below.

The opinion of the District Court of the United States appears in the Transcript of Record on pages 85 to 87. The Court of Appeals' decision, affirming the District Court, is in the record at pages 111 to 116, and reprinted in full in Appendix A, *post.*

ARGUMENT.

Introduction.

We find difficulty in rationalizing Petitioner's "Summary of Argument" (Brief, page 12) since it is there said that "The Court of Appeals has not followed the local law" (Petitioner's brief, page 12) then goes on to state that "the exact question has not been adjudicated in Illinois". Petitioner (Brief, page 12) points out that the decision of the Court of Appeals is based upon Illinois cases which are not in point. It would appear that Petitioner has tortured logic in an attempt to shape its case into a formula calculated to tempt judicial discretion on certiorari matters.

Petitioner cites a collection of cases in the footnote on page 23 of its Brief, saying with reference to those decisions:

> "While those cases *do not establish the law for Illinois,* they do constitute a consistent course of authoritative opinion which the Illinois courts could not well disregard, *unless* the cases could, on some substantial ground, be distinguished." (Italics ours.)

The cases, which "do not establish the law for Illinois," are also cited by the Petitioner in footnote 1 on page 14 of its Brief, and are the authorities discussed in various places in the Authority's brief.

Petitioner's "Summary of Argument" (Brief, page 12) also states that the Court of Appeals' decision "* * * conflicts *with the undoubted inferences** to be drawn from the Illinois cases (where the exact question has not been adjudicated)."

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* Our emphasis.

The Authority also urges that the decision of the Court of Appeals "conflicts with the rule announced by the Court of Appeals for the Third Circuit in *United States* v. *Certain Parcels of Land in Philadelphia, Pa.*, 130 F. (2d) 782 (C.C.A. 3, 1942). That case is not a decision "on the same matter" involved in the case at bar.

I.

Petitioner's "reasons" relied on for allowance of the writ are wholly without merit.

We contend that the reasons created and urged by petitioner for allowance of the writ of certiorari, are without real substance and disappear entirely once the facts and actually applicable law are stated and examined.

Petitioner's first reason (Petition, page 8) hints that a question of public importance may be involved, but concludes that "reason" with a complaint personal and peculiar solely to the Chicago Transit Authority. Moreover, petitioner's statement contained in its reason One (Petition, page 8) that the Court of Appeals' decision's *probable* involvement in the *possible* acquisition and operation of public transportation systems by other municipal corporations in the *future*" carries with it its own index of remoteness, speculation and conjecture. Complete city wide transportation systems are not properties continually bought and sold in the marketplace. Furthermore, tax pro-rating agreements can be drawn so as to avoid such matters as are now vexing the Chicago Transit Authority.

The second (Petition, IV, page 8) reason assigned by petitioner is erroneous. The decision of the Court of Appeals is grounded on the applicable Illinois statute (R. 112; Appendix A) and decisions. We perceive no reason for fol-

lowing the decisions of other states, especially when they are not in point, on the issues before this Court of Appeals.

Petitioner relies upon *United States* v. *Certain Parcels of Land in Philadelphia,* 130 Fed. 782 (C.C.A. 3), as a decision allegedly in conflict between the third and seventh Circuit Courts of Appeal. Comparison of that opinion with one now before this Court fails to disclose conflict "on the same matter." *

That decision in the third circuit is predicated upon the United States' condemnation of land by a Declaration of Taking † whereupon the government deposited the sum agreed upon as the purchase price. The City and School District of Philadelphia claimed real estate taxes assessed the properties, for the year 1941. The owners resisted the tax claim, asserting that the property was exempt from taxation for the year 1941. It having been admitted that taxes for the entries year 1941 were assessed on January 1, 1941, the trial court apportioned the taxes, holding the former owners liable for that fraction of year for January 1 to the date of the taking by the United States, March 10. The opinion of the third circuit reversing the trial court concludes on page 785 (130 F. 2d 782) with the following:

> "In the case at bar, on January 1, 1941 the United States neither had possession of this land nor was it entitled to possession since under the option agreements it was to be entitled to possession within five days of the acceptance of the offers. The offers were not accepted until February 27, 1941, according to the claim of the petitioners. Our conclusion is that even if we assume, as a fact, the landowners' statement that the options were accepted in February, 1941, that on January 1, 1941, the owners were in possession and had the right thereto and a subsequent acceptance of the options by the purchaser *did not free the vendors from*

* Par. 5(b) of Rule 38 of this Honorable Court.

† 40 U. S. C. A. § 258a.

the tax liabilities which accrued on January 1, 1941." (Italics ours)

The "law of the land" mentioned in petitioner's reason numbered Three (Petition, IV, page 8) is not compelling since petitioner's cases offered (Brief pp. 13-17) in support of it do not involve similar factual situations, nor pertinent legal propositions. It is to be remembered that the instant case is not a proceeding to collect or enforce taxes against the Transit Authority. The controlling statute (discussed hereinafter under Point II) in Illinois makes the owner on April 1 of any year liable for taxes, and sales after that date (as here) do not defeat or abate the liability of the owner on April 1. Petitioner has not shown that any case cited by it involves a statute identical to that of Illinois.

II.

Since Chicago Transit Authority was not the owner of Debtors' personal property on April 1, 1947, said property is taxable.

Legislative action fixes the liability date for taxes in the State of Illinois, Section 509 of the Revenue Act of 1939 (Ill. Rev. Stat. 1947,[1] chap. 120, § 28) as follows:

> "The *owner* of property on the first day of April in any year shall be liable for the taxes of that year.[2] The purchasers of property on the first day of April shall be considered as the owner on that day.[3]" (Emphasis supplied.)

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[1] The section cited is unchanged in the 1949 Illinois Revised Statutes.

[2] "Year" is defined in the Illinois Revenue Act of 1949 (Ill. Rev. Stat. 1947 or 1949, chap. 120, par. 482, §19) as:

> "The word 'year', when used in this Act, with reference to taxes of or for a year, shall mean a calendar year, beginning on the first day of January."

[3] The section is the same as section 59 of the Revenue Act of 1872 (L. 1871-72, page 1) except that the month was May instead of "April". This provision making owners, on the first of May, liable for taxes on

The petitioner, Chicago Transit Authority, was *not* the owner of the property, on which the taxes were assessed, on the first day of April, 1947. On page 13 of petitioner's Argument, in support of the Petition filed in this Court, it is stated:

> "(2) The petitioner acquired the properties in question on September 30, 1947 (R. 86)."

Recognition of the controlling feature of the foregoing legislative mandate is demonstrated by the opinion (R. 111 to 116, at pp. 112-113; *See also* Appendix A, *post.*) of the United States Court of Appeals in this case, wherein it said:

> "As we have observed, the legislature has provided that the owner of property on the first day of April in any year shall be liable for the taxes of that year. Thus, on April 1, 1947, the debtors were the owners of the property and *pro forma,* on that date, their liability for the taxes for the year attached; that liability has not been discharged and the debtors are, under the statute, still obligated for all taxes legally assessed for the year 1947. *The state has assessed no taxes against the Authority.** It has assessed the taxes for 1947 upon the personal property of the debtors *only against the debtors,** who were the owners on April 1 of that year and who, under the statute, remain liable."

The argument urged by the Chicago Transit Authority, in this Court, under Point I (Brief, page 13) overlooks the fact we are not asserting any tax claim against it. The cases cited, by the Authority, in the footnote on page 14 (Petitioner's brief) and duplicated in footnote 1 on page 23 of the same brief, are decisions involving tax claims asserted directly against municipal corporations.

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property for that year, was derived from Illinois Laws of 1853, pages 24, 55, § § 53 and 59. Substantially the same provision as the one now in effect appeared in section 8 of the General Revenue Act of 1898 (L. 1898, p. 36).

* Italics supplied.

* Italics supplied.

The People of the State of Illinois filed a tax claim, during proceedings for reorganization[4] of Chicago Railways Company, Chicago City Railway Company and the Calumet & South Chicago Railway Company (R. 68-69) for the *balance* due for 1947 personal property taxes as assessed against the aforesaid corporate debtors (R. 72). The Chicago Transit Authority petitioned (R. 71) to intervene in the matter of the claim, of the People of the State of Illinois, against John E. Sullivan, Trustee for Chicago Railways Company, Chicago City Railway Company, Calumet & South Chicago Railway and The Southern Street Railway Company for 1947 personal property taxes (R. 72).

The statutory exemption which Petitioner seeks to inject into the year 1947 arises under the thirteenth clause of section 500 (Ill. Rev. Stat. 1947, chap. 120, § 19) which is prefaced by, and provided as, follows:

> "All property described in this Section to the extent herein limited, shall be exempt from taxation, that is to say: * * *
>
> (13) All property of every kind *belonging* to *any* municipal corporation created for the sole purpose of owning and operating a transportation system for public service." (Emphasis supplied.)

Since the "Petitioner acquired the properties in question on September 30, 1947,"[5] (par. 3, Petitioner's brief, pages 2 and 13) obviously the properties were not "belonging" to the Authority on assessment day—April 1, 1947.

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[4] The Plan of Reorganization was reviewed by the U. S. Court of Appeals, for the Seventh Circuit, in an opinion dated January 4, 1947. See: *In re Chicago Railways,* 160 F. 2d 59, certiorari denied, April 14, 1947, 331 U. S. 808.

[5] See the Stipulation (R. 104) filed in the U. S. District Court in which it is agreed that the date of transfer of title of the Plan Properties to Chicago Transit Authority was September 30, 1947.
The opinion of the bankruptcy court also specifically noted this date of transfer (R. 85-86).

We observe that the tax exemption is granted to "any municipal corporation" qualifying under the statute and is not the exclusive privilege of the Authority.

This statutory grant of exemption is not a forgiveness of taxes. It merely purports to exempt property from assessment when that property belongs to the Chicago Transit Authority. To give the interpretation contended for by the Chicago Transit Authority would result in retroactive operation of the statute and cut off taxes demanded by the sovereign against which it had very properly planned to operate the government for the year 1947.

"If property taxable on the assessment date is transferred *within the year* to a person, institution or corporation in whose hands it is exempt, the exemption *does not commence until the following assessment date* * * *" (61 Corpus Juris 406, Sec. 417; *People* v. *Ladies of Loretto,* 246 Ill. 403; *Y.M.C.A.* v. *City of New Orleans,* 123 So. 363, 11 La. App. 360). (Italics ours)

"By the Revenue Act property is required to be assessed 'with reference to the ownership, amount, kind and value' on the first day of April. Property *owned on that day* which is *not exempt* is *taxable,* although it may thereafter be devoted to a purpose which would exempt it from taxation." (Emphasis added) (*People* v. *Catholic Bishop of Chicago,* 311 Ill. 11, 16, 142 N.E. 520).

We say that the piece-meal exemption which C.T.A. desiderates to impose upon the balance of taxes owing by Debtors to the respondent is wholly without foundation. Exemptions are not applied on the monthly installment plan.

A.

Clause 13, section 500 of Illinois Revenue Act of 1939 (Ill. Rev. Stat., 1947, ch. 120, sec. 19) does not operate retroactively.

Inquiry might well be made here as to whether the Debtor Surface Lines are exempt from taxation for the year 1947. This, because the residual of petitioner's argument equals that proposition, Petitioner urges, in essence, that its title of September 30, 1947 (pp. 19 *et seq.*) relates back to assessment day and therefore taxes are forgiven for the period April 1, 1947 to the end of that year. Or, says petitioner, there is no tax liability on or after September 30, 1947. Whichever theory Petitioner pursues results in absolution from taxes for the Debtor Surface Lines. That is not the intendment of this exemption statute.

Furthermore, the aforesaid exemption statute does not apply to the Debtor Surface Lines. Not being a municipal corporation they cannot qualify under the precise terms of this exemption statute, hence the course pursued by Chicago Transit Authority would confer an unauthorized tax exemption upon the Debtor Surface Lines.

It is well settled that statutes will be deemed to operate prospectively only and it will not be presumed to have retroactive operation unless the language employed is so clear that it will admit of no other construction (*Friedman* v. *Chicago*, 374 Ill. 545; 30 N.E. 2d 36).

This proposition was stated in *People* v. *Deutsche Gemeinde*, 249 Ill. 132, 137, 94 N.E. 162, as follows:

> "No rule of interpretation is better settled than that no statute will be allowed a retrospective operation unless the will of the General Assembly is declared in terms so plain and positive as to admit for no doubt

that such was the intention, retrospective laws, although they may be valid, are looked upon with disfavor, and an intention that laws shall have such operation will not be supposed unless manifested by the most clear and unequivocal expressions."

The contention urged by the Authority that their title relates back to the assessment date is merely to obtain a retrospective operation of the exemption statute by a subterfuge. "If property is not exempt on the tax day, it is liable to taxation for the fiscal year although it afterwards becomes exempt." (2 Cooley, Taxation, § 712, page 1499, c. 13).

It is a well settled rule of law that exemptions from taxation are subject to strict construction. (*Atlantic Coast Line* v. *Phillips*, 332 U.S. 168, 172-173, 67 S. Ct. 1584, 71 L. Ed. 1977). And it is apparent that any application, here, of the exemption granted by clause 13, section 500 of the Illinois Revenue Act of 1939 (Ill. Rev. Stat., 1947, C. 120, § 19) would result in immunizing the Debtor Surface Lines from 1947 taxes contrary to the constitution of Illinois. (Ill. Const. 1870, § 3, Art. IX.) Until this personal property "belonged" to C.T.A. it was taxable and with that proposition there is no controversy whatever.

To hold that the words of the exemption statute used by the Illinois legislature include the time before C.T.A. took title would be to insert by construction what is not found in the legislative enactment. Such strained application of the Authority's exemption would result in freeing Surface Lines from taxes without warrant in law. We say that the Illinois legislature did not surrender its taxing power over the Debtor Surface Lines.

This record, then, discloses that there exists a gap of time between April 1, 1947, and the date on which title to the personal property here involved, became vested in the Chi-

cago Transit Authority. Appellant seeks to invoke (among other theories) its status as a municipal corporation in a vain attempt to bridge that gap.

After a reading of the Authority's petition and brief, filed in this Court, inquiry might well be made as to just what is troubling the Petitioner. The answer to that is disclosed on page 4 of the petition wherein petitioner explains that it has a contractual undertaking by the terms of the Plan of Reorganization (R. 18) to "indemnify[6] *the Trustee* against the liability for taxes beyond September 30, 1947, the date of transfer of the properties".

But, we say that commitments concerning pro-rating taxes between the Chicago Transit Authority and the Trustee remain a matter between those parties, since the sovereign looks solely to the owner on assessment day. We look to the Trustee, not the Chicago Transit Authority. The bargain between the Authority and the Trustee cannot be expanded so as to strike down our claim filed against the debtor Surface Lines. It was pointed out by the Court of Appeals (Opinion, R. 114; Appendix A) that the Authority * * * having acquired its title to the property subsequently to the date when the liability for taxes attached, is in no position to assert its exemption to defeat any portion of the assessment for 1947".

Our position is well stated by the Court of Appeals (Opinion R. 112; Appendix A) as follows:

> "Both the state and the trustee for the debtors insist that, inasmuch as no claim for taxes is asserted against the Authority, the only liability to which it is subjected is its contractual obligation under the plan whereby it agreed to include in its purchase price its pro rata share of the taxes."

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[6] Article II-E (R. 18, *et seq.*) provides for the proration of taxes as is customary between buyers and sellers of property.

Stripping the petition and brief submitted by the Authority of legalistic vestments reveals that the Chicago Transit Authority is attempting to disavow its commitments to the Trustee under the Plan of Reorganization. With this desideratum we have no concern except insofar as it affects our tax claim filed and asserted against the Trustee and the Debtor Surface Lines.

We point out that none of the cases cited by Petitioner involve factual situations where a municipal corporate buyer committed itself to a contract or Plan of Reorganization and then sought to escape its contractual liability by asserting a tax exemption not operative on assessment day.

III.

Statutes exempting property from taxation are to be strictly construed.

The record before this Court conclusively establishes that the personal property involved in the tax claim did not "belong" to the Appellant at the time when the assessment was made.

Petitioner, in substance, seeks to attempt a psychological accretion to "its" exemption statute by the novel and dubious theory of relating its September 30, 1947 title back to April 1, 1947. We say that this attempt to impress the exemption on our 1947 tax claim entails a ruthless interpretation of the exemption provision urged by Petitioner.

Speaking of exemption statutes, which make the ownership of the property the test as to its exemption, Professor Cooley (II Cooley, Taxation, Sec. 676, page 1418) states that: In construing such statutes, it has been held that "belonging' means 'to be the property of' * * *."

Where property is referred to in an exemption clause as "belonging to" a designated person or corporation rather than to a place, the words "belonging to" have been construed to denote title or ownership. (*People* v. *Lake Forest Univ.*, 367 Ill. 103, 10 N.E. 2d 667). The Authority concedes it did not acquire legal title or possession of the assessed properties until September 30, 1947.

Petitioner draws an analogy between its theory and the doctrine enunciated in condemnation proceedings, citing *City of Chicago* v. *McCausland*, 379 Ill. 602 in support. But C.T.A. overlooks the fact that eminent domain proceedings are purely statutory and that in the *McCausland* case, *supra*, as in all condemnation proceedings, they are commenced by a petition to condemn being filed against specific defendants which fixes and establishes particular rights and duties. Litigation has actually begun by which the sovereign is to take the property. As was said in the *McCausland* case, *supra*, at page 605: "It is also said that in law land is regarded *as being taken at the time the petition* for eminent domain *is filed.*" (Italics ours). But that is not the situation here. The order of sale by the bankruptcy court did not establish rights in any prospective bidder. The personal property in the case at bar was not "taken" until September 30, 1947 when C.T.A. actually got title. C.T.A.'s title cannot relate back since there was nothing for it to relate back to.

It was clearly stated in *People* v. *City of Quincy*, 395 Ill. 190, 192-3, 69 N.E. 2d 892, that:

> "Section 3 of article IX of the Constitution provides that the property of municipal corporations 'may be exempted from taxation, but such exemption shall be only by general law'. This section does not of itself exempt any property from taxation. It merely gives authority to the legislature to grant such exemption within the limitations prescribed. (*People ex rel. Gill* v.

> *Trustees,* 364 Ill. 131). This constitutional provision, and the statute in it, *are to be strictly construed.* Unless the property clearly falls within the class which may be exempted, it is subject to taxation * * * (citing) * * *" (Emphasis ours).

In *City of Mattoon* v. *Graham,* 386 Ill. 180, 185, 53 N.E. 2d 955, the court said:

> "Because property is owned by a municipal corporation, it does *not* necessarily follow that such property is exempt from taxation. (*People ex rel. Gill* v. *Trustees of Schools,* 364 Ill. 131; *Sanitary District* v. *Hanberg,* 226 Ill. 480). As observed in the case last cited: 'The provision of the constitution plainly implies that property so owned *is subject to taxation* unless there is some law exempting it.' The solution of the question whether a particular parcel of property is exempt from taxation requires a consideration of each factual situation."

Conclusion.

It is therefore respectfully submitted that this case is not a proper one for review by certiorari in this Court, and that the petition for writ of certiorari should be denied.

Respectfully submitted,

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APPENDIX A.

Appendix A.

Transcript of Record, page 111

Opinion of the Court of Appeals filed herein on November 8, 1949.

Before KERNER, FINNEGAN and LINDLEY, *Circuit Judges.*

LINDLEY, *Circuit Judge.* Pursuant to an order of the District Court entered in the course of reorganization of the Chicago Surface Lines, Debtors, requiring the State of Illinois to file any and all claims for taxes against the property of the debtors, in behalf of itself and its authorized agents, within a certain time or be forever barred, the state, on August 2, 1948, filed its claim for taxes assessed against the estate's personal property for the year 1947 in the amount of $1,620,695.85, less $540,231.95 previously paid. The Chicago Transit Authority, who acquired the property on September 30, 1947, pursuant to a sale ordered

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and approved by the court, filed its answer and objections, asserting that, inasmuch as it had purchased the property during the year for which the taxes were assessed, and, inasmuch as, under the statute and decisions of the Supreme Court of Illinois, it was exempt from taxation, the court should find that the state's claim for that portion of the taxes for the year represented by the period between September 30, 1947 and December 31, 1947 should be denied.

The state's motion to strike the answer and objections of the Authority was granted. The court held that, under Section 509 of the Revenue Act, (Chapter 120, par. 28, Ill. Rev. St.), the owner of the property on April 1, was liable for the taxes of that year; that, on that date, the property taxed was owned by debtors; that title thereto passed to the Authority on September 30, 1947; that, notwithstanding the latter's undisputed right to exemp-

tion from taxation, since it was not the owner on April 1, no exemption under the Illinois law could ever come into existence, in so far as this property is concerned, for the year 1947. It concluded, further, that, under the terms of the plan of reorganization, the Authority undertook, by its acceptance of the plan, to reimburse the trustees for the pro rata share of all property taxes legally levied or assessed against the debtors' property for the year in which the property was sold, that is, 1947, and that this contractual provision was intended to adjust the purchase price as of the date of transfer.

Upon appeal the Authority urges that the court erred in allowing the motion to strike and should have held that the claim for that portion of the taxes for the year 1947 represented by the last four months of that year, subsequent to the acquisition of title by the Authority, should have been denied, because of the Authority's statutory exemption. It contends also that the court erred in holding that the tax proration provision of the plan was intended to burden the Authority with any portion of the year's taxes. Both the state and the trustee for the debtors insist that, in asmuch as no claim for taxes is asserted against the Authority, the only liability to which it is subjected is its contractual obligation under the plan whereby it agreed to include in its purchase price its pro rata share of the taxes.

As we have observed, the legislature has provided that the owner of property on the first day of April in any

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year shall be liable for the taxes for that year. Thus, on April 1, 1947, the debtors were the owners of the property and *pro forma,* on that date, their liability for the taxes for the year attached; that liability has not been discharged and the debtors are, under the statute, still obligated for all taxes legally assessed for the year 1947. The state has assessed no taxes against the Authority. It has assessed the taxes for 1947 upon the personal property of the debtors only against the debtors, who were the owners on April 1 of that year and who, under the statute, remain liable.

We think this simple statement of facts should dispose of the issues involved here. In Illinois, it matters not what

an owner of property may do with it within the year after April 1; he may sell it or give it away, but nothing that he does will lessen his liability for the taxes. True, under the statute, no lien upon personal property to secure the taxes thereon attaches until their amount shall have been determined and certified to the collector, but the inchoate statutory liability of the owner to pay the taxes upon personal property exists thenceforth after April 1, without limitation of any character whatsoever. Consequently, when the trustee sold the property to the Authority on September 30, 1947, nothing occurred in that transaction which in anywise relieved the estate from its liability for the taxes, and if any liability accrued against the Authority, it was a contractual liability arising from the contract of the partes. The sale did not affect in any way the state's right to recover the taxes from the owners.

We think this is the law of Illinois. Thus, in *People* v. *Deutsche Gemeinde*, 249 Ill. 132 at 138, which had to do with real estate taxes, the court said: "The Revenue Act fixes the first day of April in each year for determining the status of property for taxation * * * although the amount of the taxes has not been determined on the first day of April. The *liability to taxation* and the lien for whatever taxes may be levied for that year are fixed on that day." (Italics ours.) Though the lien for real estate taxes attaches as of April 1, while that for personal property attaches only after certification to the collector, we think that fact is immaterial. We are dealing with liabilities for taxes, liabilities to the state, and when the court said that the liability for taxes is fixed on that date, its intent, we think, was clearly such that, from and after April 1, 1947, the debtors were liable for the taxes for the

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entire year. The language of *People* v. *Catholic Bishop of Chicago*, 311 Ill. 11, 16, cited with reference to exemption, is likewise pertinent in this connection. The court said: "By the Revenue Act property is required to be assessed 'with reference to the ownership, amount, kind and value' on the first day of April. Property owned on that day which is not exempt is taxable, although it may thereafter be devoted to a purpose which would exempt it from taxation."

In *Biggins* v. *The People of the State of Illinois,* 96 Ill. 381, in an action to enforce a tax liability against a purchaser of property subsequent to May 1, the then date of assessment in Illinois, the court said: "As to the matter of a personal action, to recover unpaid taxes, the 59th section of the Revenue act provides that 'the owner of property on the first day of May in any year, shall be liable for the taxes of that year. The purchaser of property on the first day of May shall be considered as the owner on that day.' This, by implication, excludes the idea of a personal action against any person other than such owner. * * * the declaration should state the year for which the supposed tax upon the property was levied, and should also state the defendant was the owner of the property on the first day of May, in that year. *The People* v. *Winkleman,* 95 Ill. 412."

We conclude that the court rightfully held that the claim of the state against the debtors and their trustee for the taxes legally assessed for 1947 was not affected by the sale thereafter made during the year to the Authority and that the latter's urgent plea that it was exempt from taxation has nothing to do with the taxes for 1947, so far as the liabilities of the debtors are concerned. Inasmuch as there is no assessment for the year 1947 against property which was then exempt, the Authority's contention that the court should have given consideration to its exemption is wholly beyond the point. If it has any remedy as against the former owner of the property with regard to the taxes representing the period after its purchase, it must arise solely by way of contractual liability.

Even were it the fact that the state was asserting a claim against the Authority, we think, in view of what we have said, the latter, having acquired its title to the property subsequently to the date when the liability for taxes attached, is in no position to assert its exemption to defeat any portion of the assessment for 1947. The language of

People v. *Catholic Bishop of Chicago, supra; People* v. *Deutsche Gemeinde, supra,* and *People* v. *St. Francis Academy,* 233 Ill. 26, seems conclusive in that respect. It may well be that other courts have found a valid distinction between the exemptions of religious or charitable in-

stitutions and those of municipal corporations under the statutes of their respective jurisdictions. But Illinois has made no such distinction; and the language of its statutes and of its decisions is such, we think, as to deny any such distinction in this jurisdiction.

The Bankruptcy Court, being a court of equity and having jurisdiction of the *rem*, had jurisdiction to determine the rights and interests of all parties in interest and, therefore, the power to hear and determine whether there was involved any right of the Authority as against the trustee. The court disposed of that matter by saying: "The Plan of Reorganization in Article I-E (1) expressly provides for the proration of 'general real and personal property taxes as of the date of transfer.' If this language is to be given its usual and customary meaning, or if in fact it is to have any meaning at all, it must be that the Transit Authority undertook by its acceptance of the Plan that it would reimburse the Trustee for a pro rata share of all property taxes legally levied or assessed against the Trustee for the year in which the sale and transfer of the property was to be made, having in mind the pertinent provisions of the Illinois statute. Section 28 of the Revenue Act. This contractual provision was intended to adjust the purchase price of the property as of the date of transfer." As we read the provisions of the plan, we think that this was a correct determination of the issue between the trustee and the Authority and that, therefore, its prayer for relief was rightfully denied.

In Part III of its answer, however, the Authority prayed, in the alternative, that, if it should not be allowed the statutory exemption or relieved of liability for one-fourth of the taxes on the grounds previously urged, then that it be permitted to adopt and join in the answer and objections of the trustee to the claim of the state. In view of the fact that the final determination of whether there are taxes legally due from the estate, upon the personal property owned by the debtors on April 1, 1947, will materially affect the Authority's rights, for, under the plan, it is bound to pay its pro rata share, it is such a party in interest as should have the right to resist, upon the merits,

the legal validity of the personal property taxes for 1947 assessed against the debtors. To deny it that right would be to subject its property, acquired September 30, 1947, to a lien without a chance to be heard. It should have been given the right to be heard in defense of the validity of the taxes assessed against the trustee. We think the District Court should have permitted this portion of the Authority's pleading to stand. Therefore, the order sustaining the motion to strike is disapproved as to this part of the Authority's answer and objections. In all other respects it is affirmed.